

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

)	
AMERICAN ASSOCIATION OF)	
UNIVERSITY PROFESSORS, ET AL.,)	Civil Action No. 1:25-cv-10685-WGY
)	
Plaintiffs,)	
)	
v.)	
)	
MARCO RUBIO, in his official capacity)	
as Secretary of State, and the)	
DEPARTMENT OF STATE, ET AL.,)	
)	
)	
Defendants.)	
)	

**DEFENDANTS’ ASSENTED-TO MOTION TO PROVISIONALLY FILE
PORTIONS OF CERTIFIED ADMINISTRATIVE RECORD UNDER SEAL**

Defendants respectfully move the Court for leave to provisionally file portions of the Certified Administrative Record (“record”) under seal. Plaintiffs’ complaint seeks judicial review under the Administrative Procedure Act, which authorizes courts to “hold unlawful and set aside agency action, findings, and conclusions found to be,” among other things, “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). “In applying that standard, the focal point for judicial review should be the administrative record.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (per curiam); *see also Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977) (“[R]eview is to be based on the full administrative record that was before the Secretary at the time he made his decision.”). Defendants have therefore been compiling the relevant administrative record for submission to the Court.

Although Defendants would normally file the record on the Court's public docket, the record in this case will contain both confidential information that should not be filed publicly and non-confidential information. Defendants will publicly file the non-confidential portions of the record by 12:00 p.m. EST on Thursday, May 29, 2025, in accordance with the Court's May 22, 2025, directive. *See* ECF 98. With respect to material in the record that Defendants deem confidential, however, Defendants hereby move to file such portions of the record under seal, on a provisional basis, because the parties are currently negotiating the terms of a stipulated protective order concerning the designation, production, filing, and use of confidential information. Plaintiffs have indicated that they assent to this request to provisionally seal portions of the record that Defendants deem confidential while the parties work toward agreement on a stipulated protective order. The parties agree that provisionally sealed portions of the record will not be used or disseminated outside of this litigation, nor outside of their intended purpose.

Upon the parties' filing of a stipulated protective order, which the parties anticipate will occur in short order, and the Court's approval of it, Defendants will reassess whether and what record content should be deemed confidential pursuant to that protective order and will make an appropriate motion regarding the extent of public access to such documents, if necessary. In this regard, Defendants note that the record in this case will likely contain documents concerning immigration enforcement actions against specific, non-party individuals. Such documents contain personally identifying information protected under the Privacy Act. Furthermore, the Federal Rules of Civil Procedure restrict public access to electronic filings in cases involving "action[s] or proceeding[s] relating to . . . order[s] of removal, to relief from removal, or to immigration benefits or detention." Fed. R. Civ. P. 5.2(c); *see also* D. Mass. General Order 19-

02, “Standing Procedural Order Re: Public Access to Immigration Cases Restricted By Federal Rules of Civil Procedure 5.2(C)” (June 1, 2019). Plaintiffs have declined to take a position in this regard without seeing the documents in question.

Accordingly, due to the confidential nature of certain documents in the record, and the momentary lack of a stipulated protective order between the parties, Defendants respectfully request to provisionally file certain portions of the record under seal to guard against unwarranted disclosure. *See, e.g., Moncada v. Mayorkas*, No. 20-cv-11561-MPK (D. Mass. Sept. 7, 2022) (ECF 14) (granting motion to file administrative record under seal); *Patel v. Johnson*, No. 12-cv-12317-WGY (D. Mass. Aug. 5, 2013) (ECF 27) (same).

Respectfully Submitted,

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/s/ Ethan B. Kanter
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Counsel for Defendants

Dated: May 28, 2025

CERTIFICATE OF SERVICE

I certify that on May 29, 2025, I served a copy of the foregoing document on all parties by causing this document and its attachments to be filed with the Clerk of the Court through the CM/ECF system, which will provide electronic notice of this document to all attorneys of record.

/s/ Ethan B. Kanter

ETHAN B. KANTER

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